

**STATE OF CALIFORNIA**  
**DEPARTMENT OF FOOD AND AGRICULTURE**  
**MARKETING BRANCH**



**MARKETING ORDER FOR CALIFORNIA RAISINS**

Effective July 28, 1998

**STATE OF CALIFORNIA – DEPARTMENT OF FOOD AND AGRICULTURE  
MARKETING ORDER FOR CALIFORNIA RAISINS**

**PREAMBLE**

California raisins are one of the major specialty crops produced in the state. The production and marketing of raisins affects the welfare, standard of living and health of a large number of citizens residing in the state. In addition, a large portion of this crop is exported which positively affects the California economy and the U.S. balance of trade. The inability to maintain or expand present markets, or to develop new or larger markets results in an unreasonable and unnecessary waste of the agricultural wealth of this state. It is therefore in the public interest for the producers of California raisins to establish a California Raisin Marketing Board to conduct market development activities to improve the demand for all categories of raisin usage, including, ingredient usage and for retail packages, both branded and private label.

**ARTICLE I - DEFINITIONS**

Section A. DEFINITION OF TERMS.

As used in this Marketing Order the following terms shall have the following meanings:

1. "Act" means the California Marketing Act of 1937, Chapter 1 (commencing with § 58601) of Part 2, of Division 21 of the California Food and Agricultural Code.
2. "Acquire" means to purchase or otherwise obtain legal title to raisins from a producer or from a person or agency, governmental or private, that represents a producer or producers, or receives raisins from a producer for processing or custom packing.
3. "Books and Records" means any books, records, contracts, documents, memoranda, papers, correspondence, or other written or magnetically stored data of any person, and pertaining to matters relating to this Marketing Order.
4. "California Raisin Marketing Board" or "Board" are synonymous and mean the California Raisin Marketing Board created pursuant to Article II of this Marketing Order.
5. "Cooperative Bargaining Association" means a nonprofit cooperative association of raisin growers engaged in this state in bargaining with packers as to price and otherwise arranging for the sale of raisins of its members.
6. "Cooperative Marketing Association" means a membership association of growers which markets more than fifty percent (50%) of its raisins on a cooperative basis for its grower members.

7. "Department" means the California Department of Food and Agriculture.
8. "Dipped Seedless Raisins" includes all raisins produced by artificial dehydration of seedless grapes that possess the characteristics similar to Thompson Seedless grapes which, in order to expedite drying, have been dipped or sprayed with water only after the grapes have been removed from the vine.
9. "Golden Seedless Raisins" includes all seedless raisins whose color generally varies from golden yellow to dark amber.
10. "Marketing Order for California Raisins" and "Marketing Order" are synonymous and mean, this Marketing Order which is issued by the Department pursuant to the Act, and shall be applicable throughout the state of California.
11. "Marketing Season" and "Fiscal Year" are synonymous and mean the period beginning on August 1 of any year and extending through July 31 of the following year.
12. "Member" means any person appointed by the Department to serve on the Board established pursuant to Article II.
13. "Monuka" includes all raisins produced from Monuka grapes.
14. "Muscats" (including other raisins with seeds)" include all raisins which usually contain seeds and possess characteristics similar to Muscat raisins.
15. "Natural Condition Raisins" means raisins, the production of which includes sun-drying or artificial dehydration, but which have not been further processed to a point where they meet any of the conditions for processed raisins, as defined in this Article.
16. "Natural (sun-dried) Seedless Raisins" includes all sun-dried seedless raisins that possess characteristics similar to Natural Thompson Seedless raisins which, for the purpose of expediting drying, have not been dipped in or sprayed with water, with or without soda, oil or other chemicals prior to or during the drying process.
17. "Oleate and Related Seedless" includes all raisins produced by sun drying or artificial dehydration of seedless grapes which, in order to expedite drying, are dipped in or sprayed with water with soda, oil, Ethyl Oleate, Methyl Oleate or any other chemicals either while the grapes are on the vine or after they have been removed from the vine.
18. "Other Seedless" includes all raisins produced from Ruby Seedless, Kings Ruby Seedless, Flame Seedless and other seedless grapes not included in any of the varietal categories for seedless raisins defined elsewhere in this Article.

19. "Other Varieties" includes any variety identified by the Board and not otherwise defined elsewhere in this Article.
20. "Person" means any individual, firm, corporation, company, association or any other business unit.
21. "Processed Raisins" means raisins which have been stemmed, graded, sorted, cleaned, or seeded, ready for placing in any container used by processors in the marketing and distribution of raisins.
22. "Producer" means any person engaged within the state in the business of producing or causing to be produced for market natural conditional raisins as defined in this Article.
23. "Processor" or "Packer" means any person engaged within the state in the processing operations of receiving, stemming, grading, sorting, cleaning, seeding, packing, or otherwise preparing raisins for marketing in any form. It does not include a person who only packages for market (with or without additional preparation) raisins which in the hands of a previous holder, have been inspected and certified as meeting the applicable minimum grade standards for processed raisins.
24. "Raisins" means grapes of any variety, grown in this state, from which a significant part of the natural moisture has been removed by sun drying or artificial dehydration, either prior to or after the grapes have been removed from the vine.
25. "Sultana" includes all raisins produced from Sultana grapes.
26. "Zante Currant" includes all raisins that possess characteristics similar to those produced from Black Corinth or White Corinth grapes.

## **ARTICLE II – CALIFORNIA RAISIN MARKETING BOARD**

### **Section A. ESTABLISHMENT AND MEMBERSHIP.**

1. The California Raisin Marketing Board ("Board"), shall consist of fifteen (15) members to assist the Department in the administration of this Marketing Order. Thirteen (13) members shall be producers or persons authorized by producers to represent the producers' interests, one (1) member shall represent the largest cooperative bargaining association; and one (1) member having no financial interest in the production, processing or marketing of raisins shall be appointed to represent the general public.
2. There shall be an alternate member for each member of the Board, whose qualifications are subject to Paragraph 1 of this Section.
3. The members and alternate members shall be appointed by the Department from

nominations received from those directly affected by the terms of this Marketing Order for that purpose.

4.
  - a. The regular term of office of members and alternate members shall be two (2) years and shall begin on June 1 and end on May 31. Members and alternate members shall continue to serve until their successors have been selected, appointed and qualified.
  - b. Notwithstanding any other provision of this Marketing Order, the initial term of office of members and alternate members shall be from the date of appointment after the effective date of this Marketing Order through May 31, 1999, or until successors are selected, appointed and qualified.
  - c. Prior to the nomination, selection, appointment and qualification of the initial Board, the Department shall act as the Board in a caretaker capacity, receiving, holding, and depositing any assessment collected. Any funds in the Department's possession under this subparagraph shall be turned over to the initial Board once it is duly appointed.
5. Members and alternate members of the Board shall be appointed from nominations received as follows:
  - a. Cooperative Marketing Associations. Members and alternate members shall be appointed to represent the producer members of any cooperative marketing association organized and operating under the applicable laws of the State of California, engaged in the processing of raisins, and which received for processing or processed not less than ten percent (10%) of the total quantity of raisins received from producers for processing or processed by all packers, during the last completed marketing season. The number of members and alternate members each association which received for processing or processed not less than ten percent (10%) may nominate shall be determined by multiplying the thirteen producer members by the percentage of all raisins received by the association from its member producers for processing or processed of all raisins received for processing or processed by all packers during the last completed marketing season, rounded to the nearest whole number.
  - b. Cooperative Bargaining Associations. Members and alternate members shall be appointed to represent the producer members of any cooperative bargaining association organized and operating under the applicable laws of the State of California and whose members delivered not less than ten percent (10%) of the total quantity of raisins delivered to packers for processing. The number of members and alternate members each association may nominate shall be determined by multiplying the thirteen (13) producer members by the percentage of raisins delivered to packers for processing by the cooperative bargaining association members of all raisins delivered to packers for processing by the packers for processing by all producers during the last completed marketing season, rounded to the nearest whole number.
  - C. Other Producers. The remaining producer members and alternate members shall be appointed from nominations received from producers who have no affiliation with any entity submitting producer nominations pursuant to Subparagraph (a) or Subparagraph (b).

Section B. NOMINATION FOR BOARD MEMBERSHIP.

1. Producer Members.

- a. Nominations made pursuant to Subparagraphs 5 (a) and 5 (b) of Section 1 of this Article shall be submitted to the Department prior to May 1 of each odd-numbered year.
- b. The Department shall call a meeting prior to May 1 of each year, to receive nominations made pursuant to Subparagraph 5 (c) of Section 1 of this Article.

2. Bargaining Association Member. The cooperative bargaining association entitled to a seat on the Board pursuant to Subsection 1 of this Section shall submit its nominations for member and alternate member to the Department prior to May 1 of each odd-numbered year.

3. Public Member. The Board shall submit nominations for the public member and alternate member to the Department prior to June 15 of each odd-numbered year.

Section C. APPOINTMENT OF MEMBERS OF THE BOARD.

1. From the nominations submitted pursuant to Subsection B (1) of this Article, the Department shall select and appoint thirteen producer members and their respective alternates.
2. From the nominations submitted pursuant to Subsection B (2) of this Article, the Department shall select and appoint a member and alternate member.
3. From the nominations submitted pursuant to Subsection B (3) of this Article, the Department shall select and appoint a member and alternate member.

Section D. FAILURE TO NOMINATE. In the event nominations are not made as set forth in this Article, the Department is authorized to select and appoint members and alternate members without regard to nominations, provided, that the persons so selected shall represent the classifications prescribed in Section A of this Article.

Section E. QUALIFICATION AFTER APPOINTMENT. Any person selected and appointed by the Department as a member or alternate member shall qualify by filing with the Department a written acceptance and other documents as may be required.

Section F. ALTERNATE MEMBERS OF THE BOARD. An Alternate member of the Board shall, in the absence of the member for whom they are an alternate, sit in the place and stead of the member and shall have all the rights, privileges, powers, and duties of the member. In the event of the death, removal, resignation, or disqualification of a member, the alternate member shall act in the place and stead of the member until a successor is appointed and has qualified.

Section G. VACANCIES. To fill any vacancy on the Board, a successor for the unexpired term may be appointed from nominations made as set forth in Section B of this Article.

Section H. ORGANIZATION AND PROCEDURES OF THE BOARD.

1. The Board shall select a Chair, Vice-Chair, Secretary and other officers deemed reasonably necessary from its membership, and may adopt rules for the conduct of its meetings and functions as may be deemed desirable and necessary.
2. A quorum of the Board shall be fifty-one percent (51%) of the number of members appointed, including alternate members acting in the place and stead of members. The Board may continue to transact business at a meeting at which a quorum is initially present, notwithstanding the withdrawal of members, provided any action taken is valid only upon a vote consistent with the requirements of Paragraph 3 of this Section.
3. No action of the Board shall be valid except by a majority vote of the required quorum provided, however, that on fiscal matters, eight (8) members shall be required to validate an action of the Board.
4. No meeting of the Board, its committees or subcommittees shall be held except upon notice given pursuant to the requirements of the Bagley-Keene Open Meeting Act (Government Code Section 11120, et seq.)

Section I. COMMITTEES. The chair shall be authorized to appoint committees as may be deemed necessary to assist the Board and the Department in performing duties authorized pursuant to this Marketing Order.

Section J. EXPENSES. The members and alternate members shall be reimbursed for necessary expenses incurred, and approved by the Board, in the performance of their duties and in the exercise of their powers hereunder.

Section K. DUTIES AND POWERS OF THE BOARD. Subject to the Department's approval, the Board is authorized to:

1. Administer the provisions of this Marketing Order.
2. Recommend and report to the Department administrative rules and regulations relating to this Marketing Order.
3. Receive and report to the Department complaints of violations of this Marketing Order.
4. Recommend to the Department amendments to this Marketing Order.
5. Assist the Department in the assessment of members of the industry and in the collection of assessments to cover expenses incurred by the Board and the Department in the administration of this Marketing Order.
6. Assist the Department in the collection of necessary information and data as the

Board or the Department deem necessary for the proper administration of this Marketing Order and the Act.

7. Keep minutes, books, and records which clearly reflect all of its meetings, acts, and transactions. Copies of all meeting minutes shall be provided to the Department and the minutes, books, and records shall at all times be subject to the examination of the Department or duly authorized representative.
8. Employ necessary personnel to serve at the pleasure of the Board, and to fix their compensation and terms of employment.
9. Incur expenses, to be paid from assessments collected pursuant to Article V of this Marketing Order, as necessary and proper to enable the Board to perform its duties.
10. Receive, invest and disburse funds.
11. Establish offices, incur expenses, enter into contracts and agreements, and create liabilities and borrow funds in advance of receipt of assessments.
12. Utilize state, federal funds or other public funds, including the utilization through the use of matching funds, that may be available to conduct the activities authorized by this Marketing Order.
13. Administer, if requested by an advisory board, a board of directors or other authorized agent of a governmental program, any governmental program directly affecting California raisins; which program shall then be subject to the terms and conditions set forth in this Marketing Order.
14. Present facts and information to, and negotiate with local, state, federal and foreign agencies on matters which affect the California raisin industry.

Section L. LIMITATION OF LIABILITIES OF BOARD MEMBERS, COMMITTEE MEMBERS AND EMPLOYEES. The members, alternate members, employees of the Marketing Board and members of any committees duly appointed pursuant to this Marketing Order shall not be held responsible individually in any way whatsoever for error in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No member, alternate member, employee of the Board or committee member shall be held responsible individually for any act or omission of any other member, alternate member, employee of the Board, or committee member. The members, alternate members, or employees of the Board and members of any committees duly appointed pursuant to this Marketing Order are not responsible individually in any way whatsoever to any person for liability on any contract or agreement of the Board.

Section M. CONFLICT OF INTEREST. The members and alternate members of the Board and members of any committees appointed pursuant to this marketing order are intended to represent and further the interest of the California raisin industry, which is intended to serve the public interest.



Accordingly, the Legislature finds that, with respect to members, alternate members and members of any committee appointed pursuant to this Marketing Order, the California raisin industry is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

### **ARTICLE III – ACTIVITIES**

Section A. **RESEARCH.** The Board may conduct and contract with others to conduct research, including, but not limited to, the study, analysis, dissemination and accumulation of information as follows:

1. Producer Production Research may include, but is not limited to, research activities directed toward reducing the costs of production, and increasing raisin quality, research regarding water, soils, pests, chemical usage, integrated pest management, organic growing methods, soil and water conservation, harvesting technology, compliance with governmental regulations, and any other production related research.
2. Post-Harvest Research may include, but is not limited to, research activities directed toward improving the handling, storing, packaging, and shipping of raisins, research regarding measurements of raisin quality, raisin reconditioning, fumigation, use of controlled atmospheres, additives, residues, pest control, inspection, compliance with governmental regulations, and any other post-harvest handling, processing, storage or shipping activities.
3. Nutrition Research may include, but is not limited to, research activities directed toward improving human nutrition through discovering or improving the dietetic value of raisins and products containing raisins, research directed toward understanding and changing nutritional behavior as regards raisins and products containing raisins and any other diet or nutrition activities.
4. Food Processing Research may include, but is not limited to, research activities directed toward increasing the use and consumer acceptance of raisins, raisin paste and raisin juice concentrate in manufactured foods.
5. Market Research may include, but is not limited to, research activities directed toward improving knowledge about new and existing markets for raisins, and raisin products, sales, distribution, purchase, consumption and usage of raisins, products containing raisins or related products, studies of attitudes and beliefs which may affect the sales, usage or consumption of raisins, research measuring the effectiveness of specific marketing or communications activities of the Board and any other market activities.

Section B. **COMMUNICATIONS.** The Board may conduct and contract with others to conduct communications activities designed to inform, educate and instruct the public regarding the production, availability, uses, healthful properties or other information regarding raisins as follows:

1. Consumer Education:
  - a. In North American markets (the United States and Canada), communications plans and activities

designed to inform the general public about the production, availability, uses, healthful properties, or other information regarding raisins and products containing raisins, through means generally known as publicity, public relations, events marketing, and advertising without restriction as to media type. The Board may develop and prepare in-store point of sale materials. The in-store point of sale materials may be used in either of the following methods:

(1) The Board, directly or indirectly may inform retailers of the existence of the in-store point of sale materials and request the retailers to contact their packers for details regarding the use and availability of the materials: or (2) Packers may directly or indirectly, inform retailers of the availability of in-store point of sale materials and make arrangements for their use. In-store point of sale materials may be shipped to retailers by packers, or by the Board, directly or indirectly, upon the request of a packer.

- b. In all other markets, communications plans and activities designed to inform the general public about the production, availability, uses, healthful properties, or other information regarding raisins and products containing raisins, through means generally known as publicity, public relations, events marketing, and advertising without restriction as to media type. In addition the Board may directly or indirectly contact retailers and put on display at the retailer level, point of sale materials, made available to the industry as a whole, provided that no monies are paid directly or indirectly to retailers or wholesalers in accordance with the provisions of Section A of Article IV.
- 2. Trade Communications, including, but not limited to, Communications plans and activities of any type directed toward North American and export non-consumer buyers of raisins and raisin products, including, but not limited to, manufacturers, resellers, retailers, brokers, distributors, wholesalers and food service market segments. Trade advertising using purchased media and commissioned advertising time may be employed.
  - 3. Market Development Activities including, but not limited to, activities not specified in Paragraphs 1 and 2 of this Section, travel and meetings for the purpose of expanding existing markets or developing new markets.
  - 4. Industry Relations:
    - a. Activities involving related industry trade groups and associations, or directed toward members and other participants in these groups, including, but not limited to conventions, seminars and trade shows.
    - b. Publication and distribution of bulletins, newsletters or other communications for disseminating information relating to the raisin industry and its activities to raisin producers, packers and other individuals.

Section C. PRODUCT IDENTITY. The Board may create, or contract with others to create, distinctive logos, slogans, music, lyrics, audio, video-graphic or other communications devices for the purposes of communicating about and identifying California raisins and products containing California raisins. These devices may be used by the Board as trade or service marks, or to create a distinctive sound or look, and may be protected by the Board by registration or copyright. All communication devices are the property of the Board. The Board may choose to restrict the use, and to license these devices, as it

determines to be in the best interest of the California raisin industry, subject to the provisions of Article IV. It is intended that the devices be used for identification or endorsement.

Section D. DISSEMINATION OF INFORMATION. Upon a request from any person directly affected by this Marketing Order, the Board shall provide a copy of any research report or other work product resulting from the activities undertaken pursuant to this Article. No proprietary information, including, but not limited to names and addresses of producers, or packers, individual quantities produced or packed, prices paid, and commercial and trade secrets, shall be disclosed to any person pursuant to this Section.

Section E. PARTICIPATION IN BOARD PROGRAMS. All activities of the Board pursuant to this Marketing Order shall be equally available to all producers and packers of California raisins and no producer or packer shall be charged for, nor subjected to any minimum requirement in order to participate in any program or event undertaken pursuant to this Article.

Section F. VARIETAL BENEFITS. To the extent practicable, the Board shall plan its activities to provide benefit to each variety in proportion to the assessments paid by producers of the variety.

#### **ARTICLE IV – PROHIBITIONS AND RESTRICTIONS**

The activities undertaken by the Board shall comply with the following:

Section A. There shall be no credit backs, reimbursements, or payment or partial payment for the activities of any producer or packer, or any of their customers, distributors, wholesalers, retailers, or any other person acting in concert with the producer or packer, including, but not limited to, advertising, promotion, marketing, communications, media or public relations, whether undertaken directly or through agents, employees or representatives. Except as expressly provided for in Subsection B (1) of Article III, assessments collected pursuant to this Marketing Order shall not be used in any way to compensate, directly or indirectly, any retailer, wholesaler, or other person for trade merchandising of any kind, including, but not limited to, in-store displays, feature advertisements, listing fees, temporary price reductions, or store mailers. Assessments shall not be used to reimburse or otherwise compensate packers or their agents, representatives of employees for trade show expenditures.

Section B. The Board shall not engage, directly or through its employees, agents or representatives, in the sales or direct selling of raisins or raisin products, including, but not limited to, selling, taking or receiving orders, invoicing or otherwise arranging for the distribution of raisins or raisin products, whether for the Board or any other person. Nothing in this section shall be construed as a limitation on the ability of members representing individual processors from utilizing their employees, agents, representatives or brokers to present raisin industry marketing programs to the retail trade or to sell raisins or raisin products. This section shall not prevent the Board from giving raisins to any person free of charge.

Section C. The Board shall have the sole authority over the use of any and all intellectual property owned or controlled by the Board, including, but not limited to, the California Dancing Raisins

characters and the California Raisins logo or seal. The Board shall control the use pursuant to a written license agreement in accordance with the terms of this Marketing Order.

1. No exclusive rights to use such trademarks, service marks or copyrights shall be given, sold or otherwise transferred to any person for use on or in conjunction with raisins or raisin products.
2. Any and all use shall be available upon the same terms and conditions to:
  - a. All packers of raisins
  - b. All manufacturers of food products which use raisins or raisin products.
3. Any character, logo or seal shall always be less prominent than the proprietary brand used by the packer or manufacturer on the package, printed material or advertising of the packer or manufacturer. The placement or use of the character, logo or seal shall be separate and distinct from the brand used by the packer or manufacturer.
4. No character, logo or seal may be used in a way that would imply that the character, logo or seal is a packer's or a manufacturer's brand name or logo.
5. All licenses shall be in writing and shall require the licensee to abide by the terms of Articles III and IV of this marketing order.
6. Any license agreement entered into pursuant to this Article shall permit the use of the intellectual property owned or controlled by the Board in conjunction with the licensee's own brand or trade mark and other brand or trade marks on food products containing California raisins, provided, the use is consistent with the restrictions set forth in this Article.

Section D. In addition to the restrictions set forth in Section C of this Article, the Board's authority to license the use of the California Dancing Raisins characters or California Raisins logo or seal on packages of California raisins, California raisin products and food products which contain California raisins or California raisin products shall be limited as follows:

1. Placement shall be on no more than two locations on the package.
2. Placement shall be only once on any panel.
3. The size of the character, logo or seal shall be no greater than three quarters of one inch (3/4") in height and no more than three quarters of one inch (3/4") in width, except that where the principal display panel (or front of the package) is greater than four inches (4") in height and width, the character, logo or seal may be up to twenty percent (20%) of the height and width of the principal display panel (or front).
4. Placement of the character, logo or seal on the principal display panel shall be in only one of the four (4) corners. A "corner" shall be defined as within the area from any side or end of the principal display panel which is no more than twenty-five percent (25%) of the height and twenty-five percent (25%) of the width of the principal display panel.

Section E. To encourage advance planning and the solicitation of input, the Board shall cause a description of all planned advertising and promotional activities to be distributed to those producers and packers of California raisins who have indicated an interest in receiving the information, at least six (6) months prior to the scheduled date of execution of the planned activities for the North American market, and four (4) months for planned activities for other markets. The Board may however, implement, without providing the prior notice otherwise required by this Section, activities in response to unanticipated or unforeseen circumstances, including, but not limited to, issues involving food safety, and international trade.

Section F. Annually, and prior to the adoption of any plan for activities to be undertaken pursuant to Article III, the Board shall prepare or cause to be prepared, a report containing a review of all advertising and promotion plans implemented during the immediately preceding marketing season. The report shall include, but not be limited to, the following information:

1. An overview of all activities undertaken during the period covered by the report.
2. A summary of each plan element accompanied by the stated objective for the element.
3. A summary of all efforts implemented to measure the degree to which the stated objectives have been achieved.
4. An analysis of actions that can be taken to improve future performance.
5. An overview of activities initiated in response to previous years' recommendations, including an analysis of the extent to which these activities have produced the desired results.
6. An outline of anticipated activities for the coming year.
7. A list of research projects conducted.

## **ARTICLE V – ASSESSMENTS**

### **Section A. RECOMMENDATION OF BUDGETS AND RATES OF ASSESSMENT BY THE BOARD.**

1. Prior to the beginning of each marketing season and as may be necessary thereafter, the Board shall recommend to the Department a budget of estimated expenses of the Board, its committees and the Department. The budget shall be itemized and funded from assessments collected as authorized by this Marketing Order. Additionally, the budget may propose funding from unexpended funds carried from prior years, funds received as the result of efforts to enforce this Marketing Order or any other source.
2. In order to provide funds to carry out the budget or budgets of estimated expenditures for promotional and research activities and administrative expenses of this Marketing Order, the

Board shall recommend an annual rate of assessment to be levied upon raisin producers upon a uniform basis. The recommended annual rate of assessment shall not exceed two percent (2%) of the prior marketing season's established free tonnage field price to be paid on all free tonnage, all reserve tonnage sold for free use and all reserve tonnage sold to packers as replacement tonnage for export programs.

3. Notwithstanding the limitation on the annual assessment rate set forth in Subsection 2 of this Section, the Board may recommend and the Department may approve, at any time during the marketing season, an additional one percent (1%) for activities reasonably necessary to enable the Board to respond to unanticipated events impacting the sale, consumption or reputation of California raisins, including, but not limited to, food safety concerns, significant adverse publicity, and foreign trade restrictions.
4. The Department may also approve an additional one percent (1%) upon a determination that the free tonnage price or the free tonnage volume for the prior marketing season was so low that the projected income of an assessment within the limit set forth in this Section will not produce sufficient revenue to allow the Board to carry out its duties under this Marketing Order and the Act.
5. Any supplemental assessment levied pursuant to Subsections 3 or 4 of this Section shall be uniformly levied on producers.
6. In no event shall the assessment, including any supplemental assessment exceed four percent (4%) of the prior marketing season's free tonnage field price.

#### Section B. APPROVAL OF BUDGET AND FIXING OF RATE OR RATE OF ASSESSMENTS.

1. If the Department finds that the budget or budgets and rate or rates of assessments recommended by the Board are proper and equitable and within the limitations set forth in Section A of this Article and Article 10 (commencing with Section 58921) of the Act and are calculated to provide amounts of money as may be necessary to carry out the provisions of this Marketing Order, the Department shall approve the budget or budgets and fix the rate or rates of assessment.

#### Section C. COLLECTION OF ASSESSMENTS.

1. Any assessment shall be levied upon the producer and is a personal debt of the person assessed. To facilitate collection, the packer shall deduct the producer's assessment from amounts paid to the producer, and shall be trustee of these assessments until they are remitted with assessment reports to the Board. Failure of the packer to deduct the producer's assessment shall not exempt the producer from liability. It is the intent of this provision that the person who pays the producer for the tonnage delivered shall deduct and remit assessments without the regard to the identity of the person to whom the tonnage is physically delivered.

2. Any raisins received by a packer for processing which they have produced as a producer shall be subject to all applicable assessments.
3. Packers shall file reports as may be required, and in the time and manner specified, by the Board.
4. Any assessment levied pursuant to this Marketing Order shall constitute a personal debt of every person so assessed, and shall be due and payable in the time and manner specified by the Board.
5. In the event of a failure of any person to pay any assessments payable hereunder pursuant to this Marketing Order, the Department may file a complaint against the person in a court of competent jurisdiction for the collection of the assessments and other remedies as provided in Article 21 (commencing with Section 59231) of the Act. In addition, the Department shall be entitled to collection costs and penalties as provided in Section 58930 of the Act.

#### Section D. DISPOSITION OF FUNDS

1. Any monies collected by the Board pursuant to this Marketing Order shall be deposited in accordance with the provisions of the Act, and disbursed by the Board only for necessary expenses incurred or approved by the Department with respect to this Marketing Order. The disbursements or expenditures of money by the Board shall be made under the rules and regulations prescribed by the Department.
2. Upon the termination of this Marketing Order by the Department, either in total or in part pursuant to Section B of Article XIII, any and all monies remaining and not required to defray expenses incurred by the Board prior to termination, including reserves necessary to underwrite any employee termination expenses or pension pay-out, shall be returned by the Board or the Department in accordance with Section 58938 of the Act.
3. Upon termination of this Marketing Order by the Department, any intellectual property owned or controlled by the Board shall be held in trust by the Department for the benefit of all of those within the industry directly affected by this Marketing Order.

### **ARTICLE VI – BOOKS AND RECORDS**

Section A. BOOKS AND RECORDS. All persons subject to this Marketing Order, shall maintain books and records as required by the Act and shall make the books and records available for inspection by the Department or duly authorized representatives, including such information as may be requested by the Department.

#### Section B. CONFIDENTIAL INFORMATION.

1. Notwithstanding any other provision of law, all proprietary information, including, but not limited to,

the names and addresses of producers, processors and handlers, individual quantities produced, processed or handled, prices paid, commercial and trade secrets, and the products of research obtained by a program or by the department for the benefit of a program, from any source is confidential.

2. Upon receipt of a request of a person that establishes cause for the request, the Department shall direct the Board to provide to the requesting person any record in its possession, except that any proprietary information shall be removed before disclosure.
3. This Section shall not apply to a request for information made pursuant to Section D of Article III by a person directly affected by this Marketing Order.

Section C. IMMUNITY. No person shall be excused from attending and testifying or from producing documentary evidence before the Department in obedience to the subpoena of the Department on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of them, may tend to incriminate them or subject them to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which they may be so required to testify, or produce evidence documentary or otherwise, before the Department in obedience to a subpoena issued by the Department.

## **ARTICLE VII - APPEAL**

Section A. APPEALS. Any producer directly affected by this Marketing Order who believes that any act or determination by or on behalf of the Board, its committees or staff has been or will be detrimental or adverse to the producer's interests or detrimental or adverse to the economic interests of the processor to whom the producer delivers its raisins may petition the Department to review the act or determination to correct the detrimental or adverse impact. Any petition must be filed in writing setting forth the facts upon which it is based.

Section B. EFFECT OF APPEAL. Pending the disposition of any appeal pursuant to this Article, the parties shall abide by the act or determination of the Board, unless the Board or the Department rule otherwise. The Department shall, upon a finding that the Board has acted in a fashion inconsistent with the Act, or this Marketing Order or that the Board has implemented this Marketing Order in an unreasonably discriminatory, unfair or inequitable manner, grant the petition and declare the act or determination to be without force and effect and may order the Board to take any reasonable and necessary steps to correct any harm suffered by the appellant as a result of the disputed act or determination.

Section C. PROCEDURE FOR APPEAL. Within ninety (90) days after its initial meeting, the Board shall adopt procedures for the handling of any petition filed pursuant to this Article.



## **ARTICLE VII – GENERAL PROVISIONS**

Section A. DEPARTMENT’S APPROVAL OF ACTIONS OF THE BOARD. The exercise of any of the powers granted to the Board under this Marketing Order shall be subject to the approval of the Department.

Section B. AGENT OF THE DEPARTMENT. The Department may designate and authorize any person, including officers or employees of the State Department of Food and Agriculture, to act as the Department’s agent with respect to any provision of this Marketing Order.

Section C. ADMINISTRATIVE RULES AND REGULATIONS. Upon the recommendation of the Board, the Department is authorized to issue and make effective such administrative rules, regulations and interpretations of terms as may be necessary to carry out the purposes and attain the objective of the Act and this Marketing Order.

Section D. MAJOR AMENDMENTS. Any proposed change, modification or deletion to the provisions of Articles III, IV, V or IX of this Marketing Order shall be considered as major amendments subject to the requirements of Article 13 (commencing with Section 59021) of the Act.

## **ARTICLE IX – UNFAIR TRADE PRACTICES**

1. The use of any intellectual property of the Board in a manner inconsistent with the provisions of Section C of Article IV shall be an unfair trade practice in violation of this Marketing Order after written notice from the Board of the violation. Any person may provide written notice to the Board of the suspected violation. Upon receipt of the notice, the Board shall investigate and within thirty (30) days provide a notice of unfair trade practice as set forth in this Section, or provide notice to the complainant giving reasons why no action was taken.
2. The use of any intellectual property of the Board in a manner inconsistent with the provisions of Section D of Article IV shall be an unfair trade practice in violation of this Marketing Order.
3. Notwithstanding any provision of this Article, for shipment prior to June 30, 1999, packers may use existing packaging materials which utilize intellectual property of the Board in a manner inconsistent with the provisions of Sections C and D of Article IV.

## **ARTICLE X – ANTITRUST LAWS.**

Section A. ANTITRUST LAWS. In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Practices Act, the Fair Trade Act (Sections 16700, et.seq. of the Business and Professions Code), or any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this

Marketing Order and in furtherance of the purposes and provisions of the Act shall be a complete defense to the action or proceeding.

## **ARTICLE XI – SEPARABILITY**

Section A. SEPARABILITY. If any section, sentence, clause or part of this Marketing Order, or the applicability thereof to any person, circumstance, or thing is held to be invalid such decision shall not affect the remaining portions of this Marketing Order.

## **ARTICLE XII – DEROGATION**

Section A. DEROGATION. Nothing contained herein is or shall be construed to be in derogation or in modification of the rights of the Department or of the state to exercise any powers granted by the Act or otherwise, and in accordance with the powers to act in the premises whenever the action is deemed advisable.

## **ARTICLE XIII- EFFECTIVE TIME AND TERMINATION**

Section A. EFFECTIVE TIME. This Marketing Order shall become effective on the date specified by the Department and shall continue in effect until suspended or terminated by the Department, or by operation of law, in accordance with the provisions of the Act.

Section B. TERMINATION.

1. This Marketing Order shall be subject to termination in accordance with the provisions of Article 15 (commencing with Section 59082) of the Act.
2. The Department shall conduct a vote of producers of record with the Department on or about February 1, 2001 and on or about February 1 of every fifth year thereafter, to ascertain whether the producers favor the continuance of this Marketing Order. The Marketing Order shall continue upon a finding by the Department that the majority of the producers voting cast their votes in favor of continuation.

Section C. EFFECT OF TERMINATION. Unless otherwise expressly provided in the notice of amendment, suspension, or termination, no amendment, suspension or termination of this Marketing Order shall either (a) affect, waive, or terminate any right, duty, obligation or liability which shall have arisen or may thereafter arise in connection with any provisions not amended, suspended, or terminated; or (b) release, condone or dismiss any violation of this Marketing Order occurring prior to the effective time of the amendment, suspension or termination; or (c) affect or impair any rights or remedies of the Department or of any person with respect to the violation.